Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless Telecommunications Bureau	)	WT Docket No. 13-135
Seeks Comment on the State of Mobile	)	
Wireless Competition	)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Steven K. Berry
Rebecca Murphy Thompson
C. Sean Spivey
Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005
(202)449-9866

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Competitive Carriers Association (CCA) hereby submits this reply to the opening comments seeking data for the Federal Communications Commission's (FCC or Commission) Seventeenth Annual Report on the State of Competition in Mobile Wireless, including Commercial Mobile Radio Services.[1] CCA's membership comprises over 100 carriers ranging from small, rural providers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents almost 200 Associate Members, consisting of small businesses, vendors, and suppliers that serve carriers of all sizes.

INTRODUCTION & SUMMARY

The comments in this proceeding clearly reflect agreement that the wireless industry currently lacks effective competition and the FCC must act to help restore what was once a robustly competitive industry. Despite exploding demand for mobile voice and data services, the benefits of this demand have inured principally to AT&T and Verizon. A robustly competitive industry a decade ago has become effectively a duopoly, as AT&T and Verizon dominate the industry by any conceivable metric, including for example holdings of valuable spectrum – especially spectrum below 1 GHz, control over critical inputs like devices, HHI, investment,

1 *See Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, WT Docket No. 13-135, DA 13-1139 (May 17, 2013).

revenues, earnings and subscriber count. Despite the protestations of AT&T and Verizon (and their surrogates), the record is replete with evidence that the wireless industry is highly concentrated, and that AT&T and Verizon continue to wield their market power to erect significant barriers to effective competition. This evidence is in addition to AT&T—the nation's second largest wireless services provider—announcing its deal to acquire all of Leap Wireless—the nation's sixth largest provider—including its wireless properties, spectrum licenses, network assets, retail stores, and approximately five million subscribers.[2]

The Commission's competition analysis should recognize that the wireless industry is dominated by the two super-carriers, their dominance continues to grow, and that such dominance harms consumer welfare. The Commission should use this analysis as a catalyst to pursuing a pro-competitive policy agenda. In particular, the Commission should adopt rules to safeguard competitive carriers' access to the critical input of spectrum—both by updating the "spectrum screen" used to evaluate wireless acquisitions, and by structuring spectrum auctions in a way that encourages participation by a range of competitive carriers.

The Commission should facilitate access to devices by restoring interoperability in the Lower 700 MHz band and work with Congress to allow consumers to unlock devices without violating copyright laws. Additionally, the Commission should ensure that its rules preserve competitive carriers' access to other providers' networks, by enforcing roaming requirements and by reaffirming interconnection obligations. Such measures, if promptly implemented, would help to ameliorate duopoly conditions and restore competition in this once-vibrant marketplace.

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[2] Press Release, AT&T to Acquire Leap Wireless, July 12, 2013, *available at* http://www.att.com/gen/press-room?pid=24533&cdvn=news&newsarticleid=36744&utm_source=Bennet+%26+Bennet%2C+PLLC+List&utm_campaign=6ca70c58ec-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_7dbaf299b4-6ca70c58ec-394108537.

DISCUSSION

I. THE RECORD CONFIRMS THAT THE WIRELESS INDUSTRY IS HIGHLY CONCENTRATED AND DOMINATED BY AT&T AND VERIZON

There is significant evidence in the record establishing that the wireless industry is highly concentrated and dominated by AT&T and Verizon. As RTG pointed out, "competition has consistently eroded in the domestic wireless marketplace" due to, among other things, excessive concentration of spectrum in the hands of AT&T and Verizon, lack of device interoperability and availability, and challenges faced by small, rural, and regional carriers in obtaining data roaming on commercially reasonable terms and conditions.[3] The Writers Guild similarly explained that there is a "lack of sufficient competition among wireless carriers," and points to "AT&T and Verizon's duopoly control of the wireless market."[4] Sprint recognized that "AT&T and Verizon hold a significant advantage over their competitors through their control of the vast majority of spectrum below 1 GHz," and that "lack of access to critical low band spectrum threatens to undermine the ability of smaller carriers to continue to compete with the two dominant wireless providers."[5] And NTCA provided evidence that handset availability has been "a major barrier to [rural carriers'] ability to provide wireless service to their customers," a problem that is "amplified by the lack of interoperability in the 700 MHz band."[6] These comments all reinforce CCA's concern that the wireless industry has become dangerously concentrated in recent years, to the detriment of competition and the public interest.

The two super-carriers stand alone in portraying the wireless industry as vibrantly competitive, while even neutral observers recognize that there has been tremendous

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3 RTG Comments at 2.

4 Writers Guild of America West Comments at 2.

5 Sprint Nextel Comments at 4, 2.

6 NTCA Comments at 3-4.

consolidation in the wireless marketplace in recent years. The Wall Street Journal recently described the wireless marketplace as "rapidly consolidating,"[7] while Bloomberg noted that "smaller rivals face a number of challenges" in the face of AT&T's and Verizon's "holding a combined two-thirds of the lucrative U.S. contract-customer market."[8] These observations have again been proven true, most recently as a result of AT&T's announced acquisition of Leap Wireless, which will put Leap's five million subscribers and PCS and AWS spectrum covering 137 million people under AT&T's control, if approved.

AT&T and Verizon cannot deny that the industry's Herfindhal-Hirschman Index (HHI) continues to rise to alarming rates, and by the end of 2011, was 373 points higher than the threshold necessary to classify a market as "highly concentrated," and 722 points higher than the level measured in 2003 (the first year the Commission calculated HHIs).[9] In response, Verizon complains that the Commission puts "undue emphasis" on HHI measures,[10] while CTIA protests that HHI measures only concentration, not "competition as such."[11] But HHI levels do reflect the very concentration that has enabled AT&T and Verizon to dominate their smaller rivals. HHI levels continue to provide an accurate and informative benchmark of industry

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7 *See* Wall Street Journal, *Dish Network Drops Pursuit of Sprint, Clearing Way for Softbank*, (June 19, 2013), *available at*: http://tinyurl.com/lj2xm79. The Wall Street Journal also produced an infographic depicting how "[i]n the decades since [divestiture], the industry has undergone immense change—and consolidation—with the advent of wireless communications." CCA attaches this infographic as Exhibit A to these reply comments.

8 *See* Bloomberg, Telecom Industry Could See Biggest Merger Spree Since '06 (June 19, 2013) *available at*: http://tinyurl.com/leeej4a.

9 *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Mobile Conditions with Respect to Commercial Mobile Services, Sixteenth Report, WT Docket No. 11-186, ¶ 2 (rel. Mar. 21, 2013) ("16th Wireless Competition Report");

10 Verizon Comments at 64.

11 CTIA Comments at 71, n.260.

concentration—a benchmark which is confirmed by other data sets. For example, the Commission recently found that AT&T and Verizon together account for an astounding 67 percent of industry revenue.[12] This percentage is far higher than the combined market shares of the top two banking institutions (21%),[13] the top two airlines (32%)[14] or the top two automobile manufacturers (35.6%),[15] all of which are considered "consolidated" industries. Below, CCA provides additional data corroborating the conclusions which should be drawn from the alarming HHI levels reported over the last several years.

A. Spectrum Holdings, in Particular, Holdings Below 1 GHz

At the time of the last report on mobile competition, Verizon held 45 percent of the MHz-POPs of Cellular and 700 MHz spectrum combined, and AT&T held approximately 39 percent.[16] The Department of Justice, the agency tasked primarily with enforcing the antitrust laws of this

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12 16th Wireless Competition Report ¶ 2.

13 As of June 30, 2012, the top two U.S. commercial banking and savings institutions (Bank of America and Wells Fargo) accounted for 21% of total national deposits. *See* Fed. Deposit Ins. Corp., Summary of Deposits, Summary Tables: Asset Size (Oct. 1, 2012); Fed. Deposit Ins. Corp., Summary of Deposits, Summary Tables: Top 50 Commercial Banks and Savings Institutions by Deposits (Oct. 1, 2012) (*both available at* http://www2.fdic.gov/sod/sodSummary.asp?barItem=3).

14 For the period April 2012 through March 2013, the top two U.S. airlines (Delta and United) held 32% of the total domestic traffic market share. *See* Bureau of Transportation Statistics, Research and Innovation Technology Administration, Airline Domestic Market Share April 2012 – March 2013, *available at* http://www.transtats.bts.gov/.

15 As of June 2013, the top two U.S. automobile manufacturers (General Motors and Ford Motor Co.) held 35.6% of the total domestic market share. *See* Auto Sales – Market Data Center - WSJ.com, http://wap.wsj.com/mdc/public/page/2_3022-autosales.html#autosalesE (last visited July 23, 2013).

16 16th Wireless Competition Report ¶ 2.

country, considers the characteristics of spectrum being acquired (and in particular, the amount of low band spectrum being acquired) as part of its competition analysis in merger reviews.[17]

Verizon points to the "robust" secondary market as a sign of industry competitiveness and access to spectrum.[18] But as CCA explained in its opening comments, AT&T and Verizon account for 60% of all assignment and transfer applications filed so far in 2013, and over 80% of all license applications involving especially valuable spectrum below 1 GHz.[19] TIA claims that "[v]irtually all carriers are acquiring spectrum through swaps, acquisitions, partnerships or other arrangements . . . ," but provides no evidence for this claim.[20] The activity in the secondary market has not leveled the playing field, but rather has provided yet another avenue for AT&T and Verizon to strengthen their positions at the expense of rivals.

B. Access to Devices

According to Verizon, there is tremendous competition in the device market, enabling consumers to "mix-and-match" and build their own mobile broadband experience.[21] But there remain significant impediments to competitive carriers' ability to offer consumers the broadest array of choices, principally because of actions taken by AT&T and Verizon to limit access to devices. For example, AT&T's efforts to thwart interoperability in the Lower 700 MHz band have led to a fundamental ecosystem failure that has stranded the Lower A Block and billions of

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17 *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 at 12-13 (filed Apr. 11, 2013).

18 Verizon Comments at 33-36.

19 CCA Comments at 8.

20 *See* Telecommunications Industry Association Comments at 3.

21 Verizon Comments at 43.

dollars of investment and has stalled low-band LTE deployments in rural America.[22] In addition, as CCA has documented, AT&T and Verizon have a lengthy history of entering into exclusive device arrangements that enable them to control access to the latest, most desirable devices.[23] Thus, while Verizon points to the diversity of devices available to consumers, many of those devices are available only to customers of Verizon and AT&T. This "smartphone foreclosure" further separates rural America from the enormous opportunities opened up by access to mobile broadband.[24]

In fact, access to devices that the largest carriers tout has become an effective tool that AT&T and Verizon can use to thwart competition from smaller rivals. Verizon is right to point out that "consumers increasingly focus on the device when making wireless service purchasing decisions."[25] In addition to impacting subscribers' choice of network in the first place, "[t]he growing demand to replace feature phones with smartphones is fueling wireless device sales and offsetting the adverse impact of slower growth in wireless subscribers."[26] Verizon and AT&T's frustration of the device marketplace therefore not only puts their rivals at a competitive

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22 *See* Comments of RCA—The Competitive Carriers Association, WT Docket No. 12-69 (filed June 1, 2012).

23 *See, e.g.*, Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers, RM-11497 (filed May 20, 2008). For example, AT&T currently has an exclusive arrangement to sell the iconic Samsung Galaxy S4 Active.

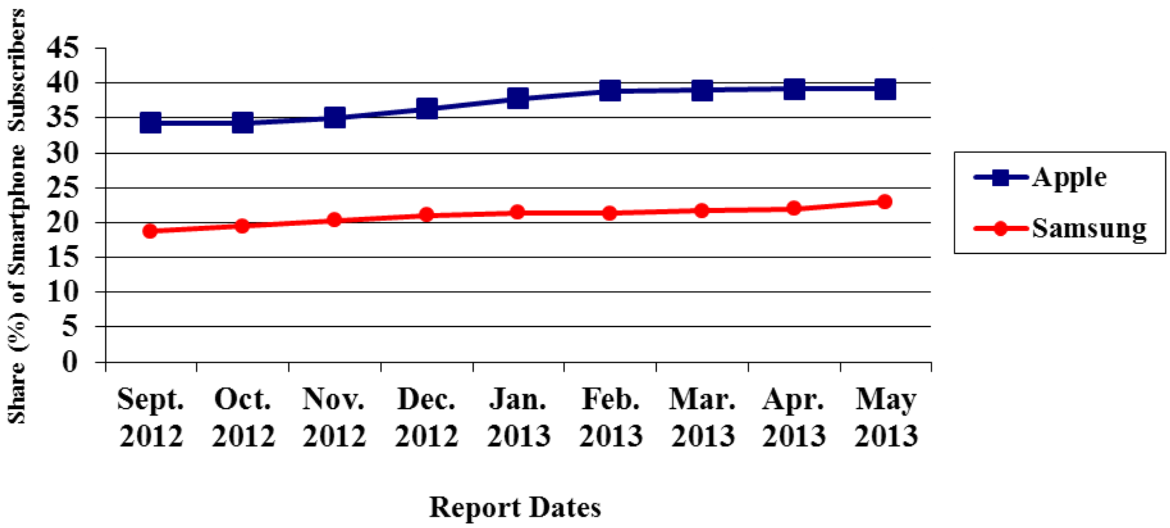
24 *See* Hanns Kuttner, *Hudson Institute*, *Broadband for Rural America: Economic Impacts and Economic Opportunities* 18 (Oct. 2012), *available at*: http://www.hudson.org/files/publications/RuralTelecom-Kuttner--1012.pdf (noting that "the Internet has transformed commerce, brought new education opportunities, enhanced financial services, facilitated medical treatments across great distances, and even offered a strengthened sense of community," that "rural America stands at a precipice" and that "without broader access to broadband capacity, rural America will lack one of the necessary tools to contain, if not narrow, the gap.").

25 Verizon Comments at 43.

26 Telecommunications Industry Association Comments at 4.

disadvantage, but at the same time earns them increased revenues—creating a vicious, two-way cycle.

The Commission should also take note of concentration in the smartphone marketplace. Below is a chart demonstrating the significant—and growing—dominance of Apple's and Samsung's U.S. smartphone subscriber market share:[27]



According to the latest data, Apple and Samsung together hold a combined 62 percent of the U.S. smartphone subscriber market share, while third place HTC has consistently lost subscriber share (currently only accounting for 8.7% of subscribers).[28] This is particularly troubling when at least one of these manufacturers has a reputation of "famously demanding

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27 Press Release, comScore Reports May 2013 U.S. Smartphone Subscriber Market Share, June 28, 2013; *see also* Press Release, comScore Reports April 2013 U.S. Smartphone Subscriber Market Share, June 4, 2013; Press Release, comScore Reports March 2013 U.S. Smartphone Subscriber Market Share, May 3, 2013; Press Release, comScore Reports February 2013 U.S. Smartphone Subscriber Market Share, Apr. 4, 2013; Press Release, comScore Reports May 2013 U.S. Smartphone Subscriber Market Share, June 28, 2013; Press Release, comScore Reports January 2013 U.S. Smartphone Subscriber Market Share, Mar. 6, 2013; Press Release, comScore Reports December 2012 U.S. Smartphone Subscriber Market Share, Feb. 6, 2013 (*each available at* http://www.comscore.com/Insights/Press_Releases).

28 *See id.*

contracts" and an overall "high handed approach."[29] Samsung, on the other hand, pulled in $5.1 billion of a total $5.3 billion—or 95 percent—of global profits from Android smartphone sales reported during the first quarter of 2013.[30] Meanwhile, rural and regional America continues to face challenges in accessing smartphones, particularly as many rural carriers lack adequate spectrum resources to deploy 3G and 4G data networks.[31]

C. CapEx Investment

AT&T, Verizon and CTIA each rely on the fact that wireless carriers invested $30 billion in their networks in 2012 as evidence of a competitive marketplace.[32] As CCA has explained, however, the absolute level of capital expenditure standing alone says nothing about what level of investment would occur in a genuinely competitive market.[33] Moreover, a closer examination of the investment data confirms that AT&T and Verizon have significant power in the market. This $30 billion figure reflects investment by the industry overall—which comprises over 100 carriers—but approximately $20 billion (or 2/3) of that investment came from the Twin Bells

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29 Caroline Gabriel, All Three Russian Leaders Dump iPhone, Rethink Wireless (July 16, 2013), *available at* http://www.rethink-wireless.com/2013/07/16/all-russian-leaders-dump-iphone.htm.

30 Ben Munson, Report: Samsung Accounts for Nearly Half of All Android Web Traffic in U.S., Wireless Week (July 17, 2013), *available at* http://www.wirelessweek.com/news/2013/07/ (articles sorted by date).

31 *See* U.S. Census Bureau, Pub. No. P20-569, Computer and Internet Use in the United States: Population Characteristics 12 (May 2013), available at http://www.census.gov/prod/2013pubs/p20-569.pdf ("At least one driver of smartphone use is the ability to access mobile telecommunications technology, such as '3G' or '4G' data networks . . . . [T]he percentage of smartphone users in metropolitan areas (50.0 percent) was significantly higher than for nonmetropolitan areas (38.9 percent), a difference at least somewhat attributable to these high-speed data networks being more readily available in urban areas.").

32 AT&T Comments at 9; Verizon Comments at 18; CTIA Comments at 3-4. Indeed, CTIA goes as far as to say that "[t]he best indicator of the wireless industry's vibrancy and competitiveness is its capital investment record." CTIA Comments at 3.

33 CCA Comments at 8-9.

alone.[34] The gravity of this fact is magnified when considered on a global scale: as the U.S. accounts for 25% of the world's total wireless capital expenditures,[35] *two companies* account for almost one-fifth of wireless carrier capital expenditures *globally*. These disparities underscore the reality that AT&T and Verizon are differently situated than the rest of the industry, and have substantially more resources than all their competitors combined.

D. Subscribers

The Twin Bells also dominate subscriber counts. Consider the two graphics provided below. One shows the percentages of subscribers served by the top ten wireless carriers as of the end of 2002, and the other shows the percentages of subscribers served by the top ten wireless carriers a decade later, at the end of 2012:

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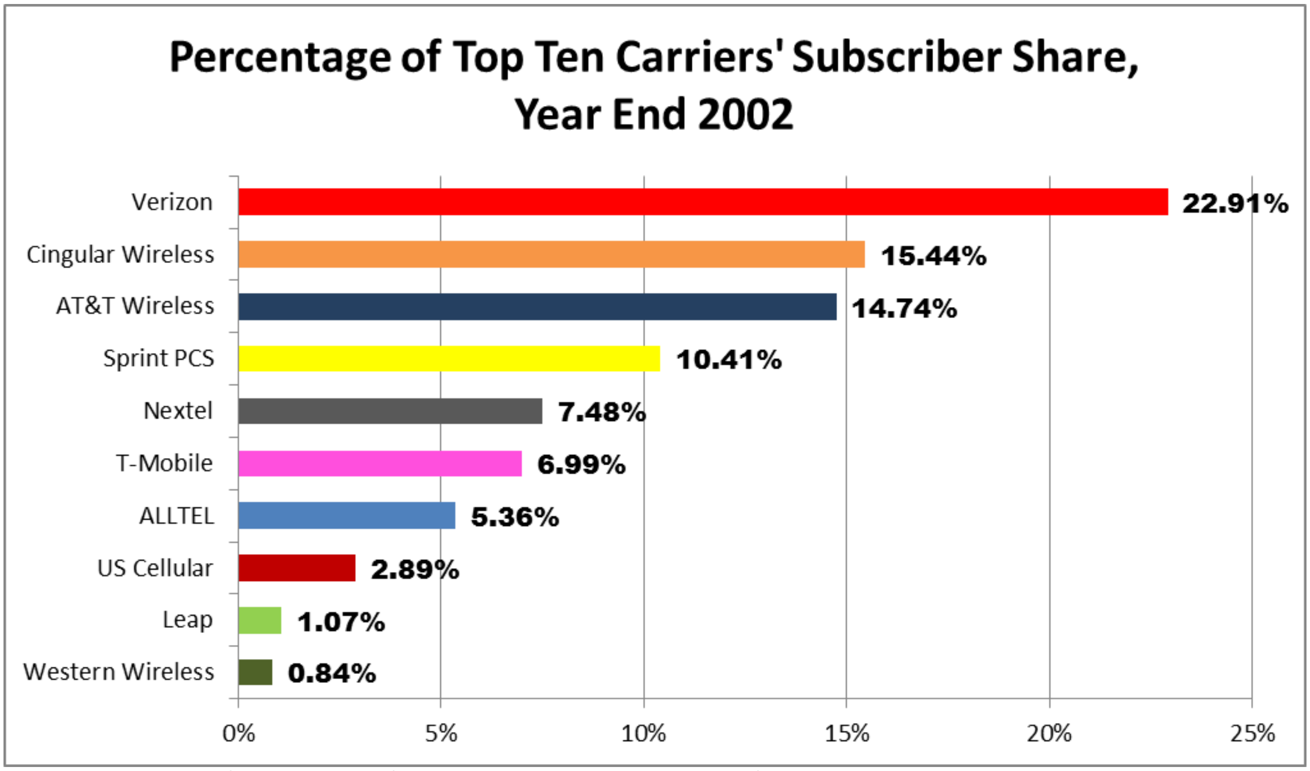
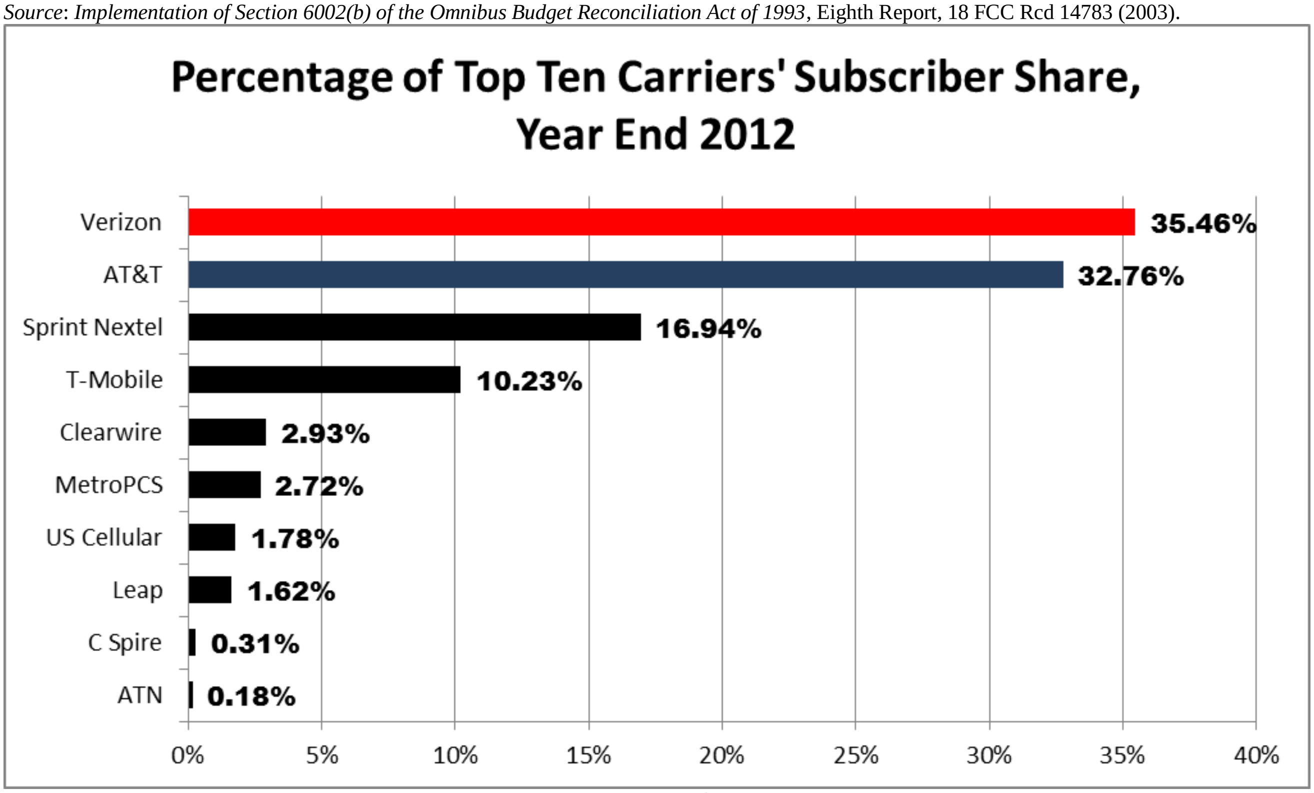
34 *See* Seeking Alpha Transcript, AT&T CEO Discusses Q4 2012 Results - Earnings Call Transcript at 4 (Jan. 24, 2013) *available at:* http://tinyurl.com/qaouc37 ("Capital expenditures were $19.7 billion with more than half of that invested in our wireless business"); Seeking Alpha Transcript, Verizon Communications' Management Discusses Q4 2012 Results - Earnings Call Transcript at 6 (Jan. 22, 2013) *available at:* http://tinyurl.com/mpdkzex ("In wireless . . . we finished the year at $8.9 billion, down 1.3%"). *See also* Barrons, Suppliers Exposed to Lower AT&T, Verizon Capex (Aug. 2, 2012) *available at*: http://tinyurl.com/khou2c7.

35 AT&T Comments at 9; Verizon Comments at 18.



Source: *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, 18 FCC Rcd 14783 (2003).



Source: *FierceWireless*, Grading the Top 10 U.S. Carriers in the Fourth Quarter of 2012 (Mar. 15, 2013), *available at* http://www.fiercewireless.com/special-reports/grading-top-10-us-carriers-fourth-quarter-2012. Note that the fifth and sixth largest providers (Clearwire and MetroPCS, respectively) have since exited the marketplace, and the newly-minted sixth largest provider (Leap) is in negotiations to be acquired by AT&T. Additionally, Verizon posted 941,000 retail postpaid net additions in 2Q13; AT&T posted 551,000 additions for the same period. *See* Verizon Communications Investor Quarterly 2Q 2013 (July 18, 2013), *available at* http://www22.verizon.com/investor/DocServlet?doc=2013_2q_qb_vz.pdf; AT&T Inc. Investor Briefing 2Q 2013 (July 23, 2013), *available at* http://www.att.com/Investor/Earnings/2q13/ib_final_2q13.pdf.

The comparison speaks for itself. Sprint similarly pointed out in terms of both landline and wireless subscribers that:

> [i]ndustry subscriber share is significantly more concentrated than it was in 1996 when Congress sought to open the Bell monopolies to competition. In 1996, no carrier had more than 14% of the nation's wireless and landline subscribers. Today, AT&T and Verizon, having consolidated all but two of the top 10 carriers from 1996, control a combined 68% of the nation's subscribers.[36]

Accordingly, sky-high HHI levels verify what several other metrics also prove: the wireless industry is highly concentrated, and AT&T and Verizon continue to gain strength and dominate the market at the expense of rivals, consumers, competition and the public interest.

II. THE COMMISSION SHOULD USE ITS COMPETITIVE ANALYSIS AS A CATALYST FOR PURSUING POLICIES THAT INCREASE COMPETITION IN THE WIRELESS INDUSTRY

In light of the striking competitive imbalance in the wireless industry, the Commission should find in its forthcoming competition report that the wireless industry **is not** effectively competitive, and use the report as a foundation for building a regulatory framework that restores competition and promotes the interests of consumers.

A. The Commission Should Take Steps to Improve Access to Spectrum

First, the Commission should adopt rules to safeguard competitive carriers' access to spectrum, both by updating the "spectrum screen" used to evaluate wireless transactions and by structuring its upcoming incentive auction in a manner that encourages and rewards participation by a broad array of carriers, including minority- and women-owned businesses.

An important component of updating the screen is the need to account for competitive advantages inherent in low-band spectrum. As the Department of Justice (DOJ) recently explained, "the propagation characteristics of lower frequency spectrum permit better coverage

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[36] Sprint Comments at 10.

in both rural areas and building interiors. A carrier's position in low-frequency spectrum may determine its ability to compete in offering a broad service area, including its ability to provide coverage efficiently in rural areas."[37] In response to DOJ's analysis, AT&T claimed that "the propagation qualities of low-frequency spectrum do not in and of themselves provide any systematic marketplace advantage" and, therefore, "'there is no meaningful distinction between high- and low-frequency spectrum from the perspective of a foreclosure analysis.'"[38] But in other instances—in particular, when speaking to investors—both AT&T and Verizon have routinely touted the superior propagation characteristics and other advantages of spectrum below 1GHz.[39] In addition, AT&T in particular, continues to amass significant low-band spectrum on the secondary market.[40]

Internationally, regulators in almost every developed country have differentiated between spectrum above and below 1 GHz, and have adopted rules to prevent aggregation of low-

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37 *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 at 1 (filed Apr. 11, 2013).

38 *Ex Parte* Letter from Wayne Watts, Sr. Executive Vice President and General Counsel, AT&T Inc. to Chairman Julius Genachowski, *et al.*, WT Docket No. 12-269 at 8 (filed Apr. 25, 2013) (citation omitted).

39 Sprint Comments at 21, n.29 (citing the multiple instances where Verizon and AT&T executives have noted their preferences for low-band spectrum, and trumpeted the competitive advantages these entities have due to their dominant shares of the same).

40 *See, e.g.*, AT&T Mobility Spectrum LLC and Triad 700 LLC Seek FCC Consent to the Assignment of 27 Lower 700 MHz Band B Block Licenses, ULS File No. 0005286787 (application consummated Jan. 30, 2013); AT&T Mobility Spectrum LLC and CenturyTel Broadband Wireless LLC Seek FCC Consent to the Assignment of Lower 700 MHz Band and AWS-1 Licenses, ULS File No. 0005337520 (application consummated Jan. 31, 2013); AT&T Mobility Spectrum LLC and Cavalier Wireless, LLC Seek FCC Consent to the Assignment of Ten Lower 700 MHz Band B Block Licenses and 41 Advanced Wireless Services License, ULS File No. 0005295740 (application consummated Jan. 30, 2013); AT&T Mobility Spectrum LLC and David L. Miller Seek FCC Consent to the Assignment of 13 Lower 700 MHz Band B Block Licenses, ULS File No. 0005296026 (application consummated Jan. 31, 2013).

frequency spectrum.[41] In addition to the instances already set out in the record, CCA would draw the Commission's attention to Industry Canada's recently updated "Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum," which it issued following the initial comment deadline in this proceeding.[42] This framework sets out factors that Industry Canada will consider in reviewing license transactions, which include, among others, "the ability of the Applicants and other existing and future competitors to provide services, given the post-transfer concentration of commercial mobile spectrum in the affected License area(s)" and "the relative utility (e.g. above and below 1GHz) and substitutability of the licensed spectrum."[43] This approach is consistent with CCA's proposal to amend the spectrum screen, whereby the Commission (in addition to its current analysis of aggregate spectrum holdings in a particular market) would analyze a carrier's spectrum holdings below 1 GHz in a particular market, and its nationwide aggregate spectrum holdings—and adopt a rebuttable presumption that acquisitions in excess of any of these three screens would be contrary to the public interest.[44]

Similarly, the Commission should implement clear, *ex ante* rules for the upcoming broadcast incentive auction that require interoperability across the 600 MHz band. There is

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41 *See* Sprint Comments at 22-24 (recounting statements by (1) Ofcom, the United Kingdom's regulatory and competition authority for telecommunications; (2) the Radio Spectrum Policy Group of the European Union; (3) the policymaking body for telecommunications in Germany; (4) the Netherlands Ministry of Economic Affairs; and (5) Comreg, the Irish regulator, all recognizing the differences in spectrum above versus below 1 GHz).

42 Industry Canada, Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licenses for Commercial Mobile Spectrum, DGSO-003-13 (June 2013), *available at* http://tinyurl.com/lfhnv6v.

43 *Id*. at 8, ¶¶ 39-40.

44 *See* Comments of Competitive Carriers Association, *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269 (filed Nov. 28, 2012).

broad consensus in the incentive auction proceeding that interoperability is necessary as part of auction rules for the reclaimed spectrum.[45] As T-Mobile explained in this proceeding, promoting interoperability across the entire 600 MHz band "would eliminate the ability of carriers to create custom-designed or 'boutique' band classes that reduce the availability, affordability, and portability of end user equipment; increase consumer switching costs; and delay the deployment of mobile broadband services."[46] And as Senator Mark Warner noted at a recent hearing on the state of wireless, "we would not have wireless systems in America but for the requirement the FCC made 35 years ago on interoperability."[47]

Finally, the Commission should consider proposals that increase minority- and women-owned business, small business, and rural telephone company participation in the upcoming incentive auction. As the Minority Media and Telecommunications Council pointed out in its letter requesting additional comment on these issues, "the Commission is required by law to protect the public interest by implementing spectrum assignments consistent with its objective to

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45 *See, e.g.*, Comments of Cellular South, Inc., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 8-9 (filed Jan. 25, 2013); Comments of Leap Wireless Int'l, Inc. and Cricket Commc'ns, Inc., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 7 (filed Jan. 25, 2013); Comments of MetroPCS Commc'ns, Inc., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 28 (filed Jan. 25, 2013); Comments of T-Mobile USA, Inc., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 21 (filed Jan. 25, 2013); Comments of United States Cellular Corp., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 23-30 (filed Jan. 25, 2013).

46 T-Mobile Comments at 23.

47 Archived Webcast: State of Wireless Communications (U.S. Senate Committee on Commerce, Science, & Transportation June 4, 2013) at 1:26:50, *available at* http://www.commerce.senate.gov/public/index.cfm?p=Hearings (click on "06-04/13 – State of Wireless Communications" link in the June 2013 section).

regulate communications without discrimination . . . ."[48] Specifically, Section 309(j)(3) of the Act requires that:

> in specifying eligibility . . . the Commission shall . . . seek to promote . . . economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women . . . .[49]

One suggestion for fulfilling this statutory goal is set out in the Act itself, which requires the Commission to pursue economic opportunities for small businesses, rural telephone companies, and businesses owned by members of minority groups and women.[50] CCA agrees with NTCA and RTG that licensing spectrum based on Economic Areas (EAs) has the exact opposite effect: rather than encouraging participation by a wide variety of applicants, EAs would significantly preclude participation in upcoming spectrum auctions.[51] Therefore, the Commission should license spectrum in the upcoming H Block auction, the AWS-3 auction, the 600 MHz auction and other upcoming spectrum auctions in small geographic licensing areas, such as Cellular Market Areas (CMAs).[52] In addition to smaller geographic license areas, the Commission should consider using the authority provided to it under the statute to enhance

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[48] *Ex Parte* Letter from David Honig, President, Minority Media and Telecommunications Council to Mignon Clyburn, Chairwoman, FCC, WT Docket No. 13-135 at 2 (filed May 20, 2013).

[49] 47 U.S.C. § 309(j)(3)(B).

[50] *See* 47 U.S.C. § 309(j)(4)(C).

[51] *See* Comments of National Telecommunications Cooperative Association, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 3-5 (filed Jan. 25, 2013); Comments of The Rural Telecommunications Group, Inc., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268 at 2-6 (filed Jan. 25, 2013).

[52] *Ex Parte* Letter from Ron Smith, President, Bluegrass Cellular to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-268 (filed July 10, 2013).

participation by the enumerated business groups in other ways, in accordance with applicable law.

The Commission should promptly amend its spectrum screen and apply it and other pro-competitive policies to the upcoming broadcast incentive auction, to help provide certainty and ensure that the auction is structured in a manner that promotes participation by a broad array of carriers.

B. The Commission Should Promote Access to Devices

Second, the Commission can promote competition by ensuring access to handsets and other devices. The Commission should grant CCA's pending petition requesting an interoperability condition as part of Verizon's proposed exchange of 700 MHz B Block licenses for AT&T's AWS licenses,[53] and immediately resolve the pending proceeding to restore interoperability throughout the Lower 700 MHz so that a functional device ecosystem can develop in that band.[54] CCA is encouraged by Chairwoman Clyburn's statements at both press conferences following the open meetings she has presided over stating that this matter will be resolved in the near future, should an industry consensus not develop "relatively quickly." Unfortunately, AT&T actually has a strong incentive *not* to reach an industry solution, "because separating adjacent Band Class 12 frequencies from AT&T's devices increases consumer

53 *AT&T Inc., Cellco P'ship d/b/a Verizon Wireless, Grain Spectrum, LLC and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Servs. and Lower 700 MHz Band B Block Licenses and to Long-Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Servs. and Lower 700 MHz Band B Block Licenses*, Petition for Conditions, WT Docket No. 13-56 (filed Apr. 4, 2013).

54 *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (Mar. 21, 2012).

switching costs and reduces the likelihood of costly churn off of AT&T's network."[55] And the Commission also should continue working with Congress to allow consumers to unlock devices without running afoul of the copyright laws.

C. The Commission Should Preserve Network Connectivity

Third, the Commission should further facilitate competitive carriers' access to other providers' networks so they can offer a nationwide, interconnected service to consumers. The Commission can do so by ensuring that competitive carriers' right to obtain data roaming agreements on commercially reasonable terms and conditions is a reality, not merely an aspiration. As T-Mobile highlights from the Sixteenth Mobile Competition Report, despite adoption of the *Data Roaming Order* "difficulties remain in reaching commercially reasonable roaming agreements."[56] Moreover, during the ongoing transition to IP networks the Commission must ensure that the regulatory safeguards in Sections 251 and 252 of the Communications Act continue to apply on a technologically-neutral basis.[57] Sprint in its comments chronicles "the refusal of certain incumbent LECS – in particular, AT&T and Verizon – to enter into interconnection arrangements that utilize IP technology either at all, or at the just, reasonable and nondiscriminatory rates, terms and conditions required by statute."[58] T-Mobile similarly agrees with the need for a regulatory backstop.[59]

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55 *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-69 *et al*. at 3 (filed June 28, 2013).

56 T-Mobile Comments at 22 (*citing* 16th Wireless Competition Report ¶ 201).

57 47 U.S.C. §§ 251, 252.

58 Sprint Comments at 11-12. Sprint also provides multiple examples of "interconnection roadblocks" it claims AT&T has erected against its competitors. *Id*.

59 T-Mobile Comments at 24 ("In addition, the Commission should be diligent in enforcing the existing requirement that ILECs must negotiate IP-to-IP interconnections in good faith, and it should maintain the important regulatory backstop provided under Sections

D. The Commission Should Address Universal Service Fund Inequalities

Finally, many commenters agree with CCA that high-cost universal service funding reform would improve overall competition. As T-Mobile points out, wireless carriers contribute approximately three billion dollars annually to the USF, but receive less than half that amount in high-cost funding.[60] And Sprint notes that ILECs' Connect America Fund (CAF) subsidies are even greater than their share of legacy USF subsidies, a fact that not only puts a drag on intermodal competition generally, but in particular serves to the benefit of AT&T and Verizon, who are able to invest more in their wireless entities as a result of the Commission's excessive wireline subsidies.[61] The Commission should take the opportunity in crafting rules for CAF Phase II to make high-cost support more technologically neutral, to conform with market realities and consumers' growing preference for and adoption of wireless services. In addition, CCA supports the Commission's contribution reform goals of broadening the USF funding base to create a stable, long-term future for the fund while reducing the complexity and uncertainty of the current contribution system. While there are many complex issues that need further analysis, the Commission can make meaningful progress in its reform efforts by focusing in the near term on relatively uncontroversial proposals that enjoy diverse support.

CONCLUSION

Based on the continued charge of the two largest carriers towards a wireless marketplace duopoly, the Commission should find in its Seventeenth Mobile Competition Report that the industry is not effectively competitive, and use that proceeding as a springboard to adopt pro-competitive policies that provide adequate access to spectrum, that ensure mobile devices work

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251 and 252 of the Communications Act to ensure competitive services result from this critical transition process.").

60 T-Mobile Comments at 24.

61 Sprint Comments at 13-15.

for consumers, that protect network connectivity and that address inequalities in the universal service regime. CCA looks forward to working with the Commission to achieve these goals and restore vibrant competition to the wireless industry.

Respectfully submitted,

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Steven K. Berry
Rebecca Murphy Thompson
C. Sean Spivey
Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005
(202) 449-9866

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